

HOUSE BILL REPORT

2SSB 5909

As Reported by House Committee On:
Agriculture & Ecology

Title: An act relating to financial responsibility requirements for vessels and facilities.

Brief Description: Revising financial responsibility requirements for vessels.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Fraser, Regala, Spanel and Thibaudeau).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/26/02, 2/28/02 [DPA].

Brief Summary of Second Substitute Bill
(As Amended by House Committee)

- Increases statutory financial responsibility requirements for barges and for tank, cargo, and passenger vessels in varying amounts.
- Requires the Department of Ecology to set financial responsibility requirements for onshore and offshore facilities by rule and to contract for an independent economic analysis of adequate levels of financial responsibility for these facilities.
- Makes entry or operation on Washington waters without meeting financial responsibility requirements unlawful.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Linville, Chair; Hunt, Vice Chair; Cooper, Dunshee, Grant, Kirby and Quall.

Minority Report: Do not pass. Signed by 6 members: Representatives Schoesler, Ranking Minority Member; Chandler, Delvin, Holmquist, Roach and Sump.

Staff: Caroleen Dineen (786-7156).

Background:

Federal law regulates vessel traffic and includes provisions for oil pollution liability, prevention, and reporting. The United States Coast Guard regulates the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualifications, and vessel manning. Within the federal regulatory scheme, the federal Oil Pollution Act includes a "savings clause" preserving the authority of states to impose additional requirements or liabilities with respect to oil discharge. In March 2000, the United States Supreme Court concluded this savings clause is limited to allowing states to adopt regulations governing liability and compensation for oil pollution; the court determined the federal savings clause does not authorize state rules regulating vessel operation, design, or manning. *United States v. Locke*, 529 U.S. 89 (2000) [Intertanko].

Washington statutes include financial responsibility requirements for vessels transporting petroleum products as either cargo or fuel across state waters and for facilities storing, handling, or transferring oil or hazardous substances in bulk on or near navigable waters. The state Department of Ecology (DOE) has rule making authority for vessel financial responsibility standards. The documentation of financial responsibility must demonstrate the ability to meet state and federal financial liability requirements for actual costs of oil spill removal, natural resource damages, and necessary expenses.

Barges, tank vessels, cargo or passenger vessels, and onshore and offshore facilities must establish evidence of financial responsibility in various amounts. Appropriate documentation for evidencing financial responsibility is specified in statute. In addition, DOE is authorized to establish lesser financial responsibility standards consistent with federal law under certain circumstances. Further, the DOE establishes the financial responsibility requirements for onshore and offshore facilities, considering factors such as the amount of oil that could be spilled, clean up costs, frequency of facility operations, damages resulting from a spill, and commercial availability and affordability of financial responsibility.

The DOE is required to deny entry to state waters to any vessel that does not meet the statutory financial responsibility requirements. The DOE also is required to report to the United States Coast Guard any vessel owner or operator that does not meet these statutory requirements or the federal Oil Pollution Act of 1990.

A tank vessel owner or operator who is a member of an international protection and indemnity mutual organization covering oil pollution risks in required amounts is not required to provide the required documentation of financial responsibility. The DOE may require these tank vessel owners or operators to prove membership in one of these organizations.

Summary of Amended Bill:

The financial responsibility requirement for barges transporting hazardous substances in

bulk as cargo is increased from the greater of \$1 million or \$150 per gross ton to the greater of \$5 million or \$300 per gross ton of such vessel. The director of the DOE may by rule establish a lesser standard for barges of a maximum 300 gross tons. Any standard set by rule for these barges must be based on the quantity and type of cargo being carried.

For tank vessels carrying oil as cargo in bulk, the amount of financial responsibility is increased from \$500 million to \$750 million after January 1, 2003, and \$1 billion after January 1, 2005. The director of the DOE may establish lesser standards for tank vessels of a maximum 300 gross tons.

A cargo vessel or passenger vessel carrying more than 6,500 barrels of oil as fuel must document financial responsibility of at least \$300 million. The DOE may, by rule, establish a lesser financial responsibility amount for any vessel meeting safety performance or other standards established by the DOE. Other financial responsibility standards are established in statute for cargo or passenger vessels carrying oil in various amounts, ranging from \$2 million for between one and 10 barrels, to \$20 million for between 1,001 and 6,500 barrels.

Owners and operators of cargo vessels and passenger vessels may be exempt from the financial responsibility documentation requirements based on membership in an international protection and indemnity mutual organization covering oil pollution risks in required amounts. The director of the DOE must require any tank, cargo, or passenger vessel owner or operator to prove membership in such an organization.

In addition to oil spill removal, natural resource damages, and necessary expenses, the financial responsibility must demonstrate the ability to pay for hazardous substance spill removal, civil penalties and fines imposed, and shipwreck and ship debris removal from waters and land related to a spill or substantial threat of a spill of oil or a hazardous substance.

Financial responsibility for an onshore or offshore facility is to be established by DOE rule by January 1, 2005. In addition to other statutory factors, the DOE must consider the amount of civil penalties and fines that could be imposed and must consider the availability and affordability of financial responsibility for both large and small facilities. The DOE also must contract for an independent economic analysis of adequate levels of financial responsibility for onshore and offshore facilities that takes into account the factors that DOE considers when establishing these requirements. This analysis must be delivered to the Legislature and the Governor by September 1, 2003.

Entering or operating in state waters without meeting the statutory financial responsibility requirements is unlawful, except when necessary to avoid injury to the vessel's crew or passengers.

Definitions of "hazardous substances" and "oil" are amended to add references to federal regulations adopted as of March 1, 2002. Exemptions to the "hazardous substances" definition are added for several noncompound metals in solid form of a specified size. The definition of "inland barge" is deleted.

Legislative findings include the need to change current financial responsibility statutes to reflect increased risks of spills, changes in federal law, comparative standards of other states, and recent experiences with spills. Legislative intent is specified to provide the highest level of protection consistent with other western states and to achieve a more uniform financial responsibility system along the Pacific coast.

Amended Bill Compared to Second Substitute Bill:

The amendments advance dates in financial responsibility provisions and review and report requirements by one year. The amendments also remove the requirement for the DOE to review the statutory financial responsibility requirements for tank, cargo, or passenger vessels and report on the sufficiency of these requirements every five years.

Appropriation: None.

Fiscal Note: Requested on February 25, 2002.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The Intertanko decision drew a line between federal and state responsibility for oil pollution prevention. The Intertanko decision left states with limited ability to regulate on this issue. The New Carissa spill cost approximately \$40 million, and the Exxon Valdez spill cost approximately \$20 billion. This bill helps to ensure that vessel operators are able to pay for clean up and for natural resource damages caused by spill and ensures that responsible parties, not taxpayers, pay for spills. This bill is good public policy and gives an incentive to businesses to meet the standards.

This bill was introduced last year and should be amended to correct the dates included within various provisions of the bill. The DOE will need funding to implement this bill.

Testimony Against: This bill will not make anything safer. The marketplace sets standards higher than regulatory or legislative actions. The risk of spills is decreasing in size, frequency, and severity. The bill creates a problem for large fishing and processing vessels in obtaining and paying for documentation, as financial responsibility would not be available from the usual providers at higher levels and premiums would increase. Different standards in Washington and Oregon may create problems for operators on the Columbia River.

Concern exists regarding the fiscal impact to the DOE and the source of funds that will be used to pay for the impacts created by this bill. Five-year reviews are not needed. The Model Toxics Control Account should not be used to pay for implementing this bill.

Testified: (In support) Bruce Wishart, People for Puget Sound and Dale Jensen, Department of Ecology.

(Opposed) Rick Wickman, Columbia River Steamship Operators; Randy Ray, Puget Sound Steamship Operators Association; and Greg Hanon, Western States Petroleum Association.